

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRACY BEASLEY,

Plaintiff,

v.

TRAVELERS COMMERCIAL
INSURANCE COMPANY,

Defendant.

Case No. 2:23-cv-00326-DJC-CSK

ORDER AND FINDINGS AND
RECOMMENDATIONS ON
DEFENDANT'S MOTION TO DISMISS, OR
IN THE ALTERNATIVE, TO COMPEL AND
MOTION FOR MONETARY SANCTIONS

(ECF Nos. 51, 66)

Pending before the Court is Defendant Travelers Commercial Insurance Company's motion to dismiss, or in the alternative, to compel, (ECF No. 51) and motion for monetary sanctions (ECF No. 66).¹ Plaintiff is appearing without counsel. Pursuant to Local Rule 230(g), the Court submitted the motions upon the record and briefs on file and vacated the March 25, 2025 and May 13, 2025 hearings. (ECF Nos. 56, 69.) For the reasons that follow, the Court recommends GRANTING Defendant's motion to dismiss. The Court further DENIES Defendant's alternative motion to compel as MOOT and DENIES without prejudice Defendant's motion for monetary sanctions.

I. BACKGROUND

Plaintiff initiated this action in Sacramento County Superior Court against

¹ This matter proceeds before the undersigned pursuant to 28 U.S.C. § 636, Fed. R. Civ. P. 72, and Local Rule 302(c).

1 Defendant alleging a single breach of contract claim. See Compl. (ECF No. 1, Exh. 1.)
2 On February 23, 2023, Defendant removed this action to federal court on the basis of
3 diversity jurisdiction. (ECF No. 1.) On March 2, 2023, Defendant filed an Answer. (ECF
4 Nos. 3.)

5 On March 28, 2023, Magistrate Judge Kendall J. Newman ordered the parties to
6 meet and confer and submit a joint statement pursuant to Federal Rules of Civil
7 Procedure 16 and Local Rule 240 for purposes of scheduling case deadlines. 3/28/2023
8 Order (ECF No. 5). The parties were ordered to file a joint statement by May 10, 2023.
9 *Id.* at 2. Plaintiff was reminded that while the Court “liberally construes filings by parties
10 who are not represented by counsel, pro se parties are still required to comply with the
11 Federal Rules, the court’s Local Rules and all orders of the court.” *Id.* Plaintiff was further
12 warned of her obligation to confer in good faith with Defendant on the submission of the
13 joint statement. *Id.* A remote hearing for May 16, 2023 was scheduled for the initial
14 scheduling conference. *Id.*

15 On May 9, 2023, Plaintiff filed a “request for written communication” stating she is
16 “hearing impaired” and that “[w]ritten communication is appreciated.” (ECF No. 7.)
17 Plaintiff further requested a stay of this action while she “secure[d] legal counsel.” *Id.*
18 Plaintiff repeated this request to chambers by email as well. 5/11/2023 Order at 1 (ECF
19 No. 9). On May 10, 2023, Defendant filed a Defendant-only status report providing
20 proposed case deadlines and stating that Defendant attempted to confer with Plaintiff on
21 multiple occasions, but these attempts were unsuccessful. (ECF No. 8.) On May 11,
22 2023, Magistrate Judge Newman issued an order warning Plaintiff “that her conduct thus
23 far in this case is unacceptable[,]” reminding Plaintiff of her requirement to confer with
24 Defendant to submit a joint statement, reminding Plaintiff that “cooperation and civility
25 between the parties is required so the case can move forward” and warning Plaintiff that
26 future failure by Plaintiff to confer with Defendant may result in sanctions. 5/11/2025
27 Order at 2. Plaintiff was also warned that waiting to inform the Court as to her hearing
28 impairment last minute did not allow for sufficient time to arrange for accommodations

1 considering Plaintiff was provided ample time to request accommodations for the
2 hearing. *Id.* Plaintiff was also reminded that any requests, motions, notices, and related
3 filings must be filed on the docket and not emailed to chambers staff. *Id.* In addition, the
4 May 11, 2023 Order denied Plaintiff's request to stay the action without prejudice for
5 failure to establish good cause and reset the initial scheduling conference for June 27,
6 2023. *Id.* at 2-3. The parties were ordered to confer over case deadlines and submit a
7 joint statement no later than June 13, 2023. *Id.* at 3.

8 On May 11, 2023, Plaintiff filed a second motion to stay requesting a stay of this
9 action "until legal counsel is secured." (ECF No. 10.) On June 13, 2023, Plaintiff filed a
10 "medical continuance" and indicated that she was "unable to proceed with the case due
11 to [Plaintiff's] medical crisis requiring hospitalization and [] being physically
12 incapacitated." ECF No. 12 at 1. Plaintiff also attached a medical note from UC Davis
13 Health's Dr. Alejandro Jimenez, M.D. indicating Plaintiff had been hospitalized in May
14 2023 and to "please excuse her from all activities to accommodate the recovery period"
15 and that her recovery would be revisited "after November 9, 2023." *Id.* at 2. On the same
16 day, Defendant filed a Defendant-only status report in response to the court's May 11,
17 2023 Order. (ECF No. 11.) In its status report, Defendant's counsel indicated it had
18 attempted to confer with Plaintiff on numerous occasions and was again unsuccessful in
19 securing a joint status report due to Plaintiff's lack of participation. *Id.* at 1, Decl. of Joel
20 A. Graboff ¶¶ 4-14 (ECF No. 11-1). In the afternoon of June 13, 2023, Plaintiff emailed
21 chambers staff her June 13, 2023 filing requesting a "medical continuance" and
22 indicating she was "unable to proceed with the case due to [Plaintiff's] medical crisis."
23 6/21/2023 Order at 2 (ECF No. 13).

24 On June 21, 2023, Magistrate Judge Newman issued an order to show cause why
25 this action should not be dismissed. 6/21/2023 Order at 2. The June 21, 2023 Order
26 indicated it was not clear whether Plaintiff was seeking to dismiss her action or
27 requesting a stay of this action but that lengthy stays cannot be granted as Plaintiff was
28 previously informed. *Id.* The Court indicated it was inclined to grant a one-time 60-day

1 extension on the scheduling of the case deadlines, but that it was not inclined to grant
2 extensions beyond this without further information. *Id.* The June 21, 2023 Order vacated
3 the June 27, 2023 initial scheduling conference and ordered Plaintiff to respond to the
4 order indicating whether she intended to dismiss the action or if she would seek a one-
5 time 60-day continuance of the case scheduling deadlines. *Id.* at 3. Plaintiff was given
6 until July 12, 2023 to respond to the June 21, 2023 Order. *Id.* On July 10, 2023, Plaintiff
7 filed a response to the June 21, 2023 Order requesting a 60-day extension on the
8 scheduling of case deadlines and indicated she was in the process of obtaining counsel
9 to evaluate Defendant's status report. (ECF No. 14.) On July 18, 2023, Magistrate Judge
10 Newman discharged its June 21, 2023 Order, granted Plaintiff a 60-day extension of
11 time and ordered Plaintiff to contact Defendant by September 12, 2023 to provide an
12 update as to whether she was ready to proceed with case scheduling or whether she
13 intended to dismiss the action. 7/18/2023 Order at 2 (ECF No. 15). The July 18, 2023
14 Order also directed Plaintiff to participate in the drafting of a joint statement for
15 scheduling purposes if she planned to proceed with the action, and that the parties were
16 required to submit a joint statement by September 19, 2023. *Id.* The initial scheduling
17 conference was reset to September 26, 2023 and Plaintiff was advised that should she
18 require accommodations for the hearing, she was required to familiarize herself with the
19 court's procedures for making such requests. *Id.*

20 On September 19, 2023, Defendant filed a status update and informed the Court
21 that Defendant had been in contact with Dylan Schaffer, who was not yet counsel of
22 record for Plaintiff, but who had indicated to Defendant that he would be making an
23 appearance on behalf of Plaintiff shortly. ECF No. 16 at 2. On the same day, Dylan
24 Schaffer filed a notice of appearance on behalf of Plaintiff. (ECF No. 17.) Plaintiff's
25 counsel Dylan Schaffer also requested a continuance of the scheduling hearing. *Id.* at 2.
26 On September 20, 2023, this action was reassigned to the District Judge as it was no
27 longer designated a pro se action and the September 26, 2023 initial scheduling
28 conference before Magistrate Judge Newman was vacated. (ECF No. 19.)

1 On October 20, 2023, this action was referred to Magistrate Judge Newman for
2 settlement proceedings pursuant to the parties' request in their joint status report. (ECF
3 No. 24.) Parties were ordered to file an updated joint status report within fourteen (14)
4 days after completion of settlement proceedings. *Id.* A settlement conference was held
5 before Magistrate Judge Newman on January 17, 2024. (ECF No. 28.) The case did not
6 settle, and Plaintiff's counsel Dylan Schaffer informed the Court he intended to file a
7 motion to withdraw as counsel. (ECF No. 29.) On March 25, 2024, the District Judge
8 issued a Minute Order directing Plaintiff's counsel to file a motion to withdraw or file,
9 along with Defendant, an updated joint status report. 3/25/2024 Order (ECF No. 30.)
10 Parties were warned that failure to comply with the order may result in an order
11 dismissing this action pursuant to Federal Rules of Civil Procedure 41(b). *Id.*

12 On March 27, 2024, Plaintiff's counsel Dylan Schaffer filed a motion to withdraw
13 as Plaintiff's counsel and set it for hearing before the District Judge. (ECF No. 31.) On
14 April 22, 2024, the District Judge granted the motion to withdraw noting that "the Court
15 finds that the attorney-client relationship has broken down such that it is no longer
16 possible for retained counsel to continue representing Plaintiff in this case." Order
17 Granting Mot. to Withdraw at 1 (ECF No. 33). Plaintiff was ordered to retain new counsel
18 within 30 days of service of the April 22, 2024 Order and new counsel to file a notice of
19 appearance in this action. *Id.* at 2. Plaintiff's outgoing counsel, Dylan Schaffer, was
20 ordered to serve a copy of the April 22, 2024 Order on Plaintiff at her last known address
21 and file a certificate of service attesting to such service. *Id.* The court further noted that
22 upon completion of service, Schaffer's responsibility to represent Plaintiff would be
23 terminated. *Id.* On April 23, 2024, Plaintiff's prior counsel Schaffer filed a certificate of
24 service attesting to mailing the April 22, 2024 Order to Plaintiff at her insured address in
25 Sacramento and to her P.O. Box address in Sacramento. ECF No. 34 at 2.

26 On May 14, 2024, Plaintiff filed a motion for a 60-day extension of time to retain
27 counsel. (ECF No. 36.) Plaintiff indicated she was "experiencing some personal medical
28 issues." *Id.* On May 22, 2024, the District Judge granted Plaintiff 60 days to retain new

1 counsel and directed new counsel to file a notice of appearance. 5/22/2024 Order at 2
2 (ECF No. 37).

3 On July 1, 2024, Plaintiff filed a motion for a six (6) month extension of time
4 requesting a “medical continuance” because she has been “unable to proceed with the
5 case due to medical crisis.” ECF No. 38 at 1. Plaintiff submitted a medical note from
6 Sacramento Native American Health Center, Inc. indicating Plaintiff had “an extensive
7 medical condition” and that she would be “undergoing an extensive work up to determine
8 the ongoing source of pain.” *Id.* at 2. On July 3, 2024, Defendant filed an opposition
9 opposing Plaintiff’s request indicating that Plaintiff has had numerous opportunities to
10 move the case forward and has failed to provide justification as to why another extension
11 should be permitted. ECF No. 39 at 2. On July 10, 2024, the District Judge denied
12 Plaintiff’s request for an extension of time indicating that since the removal of this action,
13 “Plaintiff has sought to stay or continue the case five times either to allow Plaintiff time to
14 secure legal counsel or because of medical issues.” 7/10/2024 Order at 1 (ECF No. 40).
15 The July 10, 2024 Order noted that most recently, the court granted Plaintiff 60 days to
16 retain new counsel and that Plaintiff’s current request did not seek an extension of any
17 particular deadline but instead was seeking “a stay of the case for the next six months
18 while Plaintiff attends to her medical needs.” *Id.* The court noted that it was sympathetic
19 to Plaintiff’s medical issues but that Plaintiff had not established a hardship that would
20 “warrant such a lengthy stay when balanced against the prejudice to Defendant and the
21 efficient use of judicial resources.” *Id.* at 2. The court further noted that Plaintiff had “not
22 described how her medical condition or planned health care interfere with her ability to
23 prosecute the case” or whether Plaintiff’s medical condition would be resolved within the
24 requested timeframe. *Id.* (citing *Miesegaes v. Allenby*, 2020 WL 3077906, at *2 (C.D.
25 Cal. Feb. 11, 2020) (granting an extension of stay where the court determined that the
26 defendant was unable to participate in his own defense of the claims against him at this
27 time due to injuries)). The court further indicated to Plaintiff that if she “is unable to
28 prosecute her case at this time, she may stipulate to dismissal without prejudice and

1 refile when she is able.” *Id.*

2 On July 24, 2024, Plaintiff filed a motion to proceed in forma pauperis, which was
3 granted by the District Judge and referred this action to the undersigned for all further
4 proceedings. (ECF Nos. 45, 46.) On August 16, 2024, the Court ordered the parties to
5 confer regarding a pretrial scheduling order. 8/16/2024 Order (ECF No. 47). On
6 September 27, 2024, Defendant filed a Defendant-only status report proposing case
7 scheduling deadlines and stating it was unable to confer with Plaintiff despite numerous
8 attempts to do so. (ECF No. 49.) The Court issued a Pretrial Scheduling Order on
9 October 3, 2024. 10/3/2024 Pretrial Sch. Order (ECF No. 50).

10 On February 13, 2025, Defendant filed the pending motion to dismiss, or in the
11 alternative, to compel pursuant to Federal Rules of Civil Procedure 41 and 37 and
12 noticed it for a hearing before the undersigned for March 25, 2025. Def. MTD (ECF No.
13 51). Plaintiff was served with Defendant’s motion by mail and email on February 13,
14 2025. (ECF No. 51-2 at 3-4.) Plaintiff’s opposition or statement of non-opposition was
15 due February 27, 2025, but Plaintiff did not file an opposition or statement of non-
16 opposition within the required deadline. See Docket; E.D. Cal. L.R. 230(c). On March 18,
17 2025, Defendant’s motion to dismiss was submitted without appearance and without
18 argument and the March 25, 2025 hearing was vacated. (ECF No. 56.) On March 26,
19 2025, Plaintiff filed a motion for a hearing on Defendant’s motion, which was opposed by
20 Defendant and denied by the Court. (ECF Nos. 58, 60, 70.) Over five weeks after her
21 opposition was due, on April 9, 2025, Plaintiff filed a 45 to 60-day extension of time to file
22 an opposition to the motion to dismiss indicating she “did not have cognitive capacity
23 after motor vehicle collision hospitalization on 02/02/2025” to address Defendant’s
24 motion and that she “sustained additional neurological damage.” (ECF No. 61.)
25 Defendant opposed the motion. (ECF No. 63.) On June 25, 2025, the Court granted in
26 part Plaintiff’s motion for an extension of time and ordered Plaintiff to file her opposition
27 or statement of non-opposition to Defendant’s motion to dismiss by July 9, 2025.
28 6/25/2025 Order at 5 (ECF No. 70). On July 9, 2025, Plaintiff filed a “motion for

1 continuance” to file an opposition to Defendant’s motion to dismiss, which Defendant
2 opposed. (ECF Nos. 72, 73.) In support of her motion, Plaintiff attached a medical note
3 from UC Davis Health Dr. Vijay Agusala stating “[g]iven her current heart issues, I as
4 [Plaintiff’s] cardiology physician, would recommend she avoid stressful situations as
5 possible.” ECF No. 72 at 3. On July 15, 2025, Plaintiff filed her opposition to Defendant’s
6 motion to dismiss which was entered on the Docket on July 16, 2025. (ECF No. 75.) On
7 July 16, 2025, the Court denied Plaintiff’s request for an extension of time for failure to
8 establish good cause. 7/16/2025 Order (ECF No. 74). On July 16, 2025, Defendant filed
9 a motion to strike Plaintiff’s opposition to Defendant’s motion to dismiss. (ECF No. 76.)
10 On July 25, 2025, Plaintiff filed an opposition to Defendant’s motion to strike. (ECF No.
11 77.)

12 On April 24, 2025, Defendant filed a motion for monetary sanctions pursuant to
13 Federal Rules of Civil Procedure 37 and noticed it for hearing before the undersigned for
14 May 13, 2025. Def. Mot. for Monetary Sanctions (ECF No. 66). Plaintiff did not oppose
15 or respond to Defendant’s motion for monetary sanctions. See Docket. On May 6, 2025,
16 Defendant’s motion for monetary sanctions was submitted without appearance and
17 without argument and the May 13, 2025 hearing was vacated. (ECF No. 69.)

18 On June 25, 2025, the Court granted in part and denied in part the parties’
19 motions to modify the pretrial scheduling order (ECF Nos. 65, 67) and extended certain
20 case deadlines. 6/25/2025 Order at 3-4. The Court also directed Plaintiff to indicate her
21 representation status by July 2, 2025 based on Plaintiff’s indication she may be
22 represented by counsel. *Id.* at 4. On July 3, 2025, Plaintiff filed a status report indicating
23 she had not retained counsel but was still seeking counsel. (ECF No. 71.)

24 **II. LEGAL STANDARDS**

25 Under Federal Rule of Civil Procedure 41, a court may dismiss an action for
26 failure to prosecute or failure to comply with the Federal Rules of Civil Procedure, the
27 court’s local rules, or any order of the court. Fed. R. Civ. P. 41(b); *see also Ghazali v.*
28 *Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (approving dismissal under Rule 41(b) for a party’s

failure to follow the district court's local rules). This court's Local Rules are in accord. See E.D. Cal. Local Rule 110 ("Failure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or within the inherent power of the Court."); E.D. Cal. Local Rule 183(a) (providing that a pro se party's failure to comply with the federal rules, local rules, or other applicable law may support dismissal of that party's action).

The Ninth Circuit has found the following factors relevant in determining whether a case should be dismissed under Rule 41(b):

- (1) the public's interest in expeditious resolution of litigation;
- (2) the court's need to manage its docket;
- (3) the risk of prejudice to the defendant(s);
- (4) the availability of less drastic alternatives; and
- (5) the public policy favoring disposition of cases on their merits.

Applied Underwriters, Inc. v. Lichtenegger, 913 F.3d 884, 890 (9th Cir. 2019).

The court has the inherent power to control its docket and may, in the exercise of that power, impose sanctions where appropriate, including dismissal of the action.

Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000).

III. DISCUSSION

A. Defendant's Motion to Dismiss, or in the Alternative, Compel

Defendant moves to dismiss this action, or in the alternative, compel pursuant to Federal Rules of Civil Procedure 41(b) and 37(b) for Plaintiff's failure to comply with her discovery obligations and the Court's orders. Def. MTD at 1-2. Defendant contends that Plaintiff has: (1) failed to serve initial disclosures pursuant to Federal Rules of Civil Procedure 26 as ordered by the Court in its October 3, 2024 Pretrial Sch. Order; (2) failed to respond to Defendant's requests for production and requests for admissions despite repeated requests; (3) failed to respond to Defendant's meet and confer efforts as to outstanding discovery; and (4) failed to respond to Defendant's attempts to schedule Plaintiff's deposition and inspect the subject property. *Id.* at 2, 12-15.

Alternatively, Defendant moves to compel Plaintiff to: (1) serve initial disclosures within

1 10 days; (2) serve responses to Defendant's requests for production and responsive
2 documents, without objections, within 10 days; and (3) confer with Defendant as to
3 available dates for Plaintiff's deposition and inspection of the subject property. *Id.* at 2,
4 21-23. Defendant also seeks monetary sanctions in the amount of \$1,250.00 from
5 Plaintiff for her gross misuse of the discovery process. *Id.* at 2, 23.

6 As a preliminary matter, the Court addresses Defendant's motion to strike Plaintiff's
7 untimely opposition to Defendant's motion to dismiss. (ECF No. 76.) On June 25, 2025,
8 the Court granted in part Plaintiff's motion for an extension of time and ordered Plaintiff
9 to file her opposition or statement of non-opposition to Defendant's motion to dismiss by
10 July 9, 2025. 6/25/2025 Order at 5. On July 16, 2025, the Court denied Plaintiff's second
11 request for an extension of time to file an opposition to Defendant's motion to dismiss for
12 failure to establish good cause. 7/16/2025 Order. After the Court's denial was filed,
13 Plaintiff's unauthorized opposition was entered on the docket on July 16, 2025. (ECF No.
14 75.) Plaintiff's opposition or statement of non-opposition to Defendant's motion to
15 dismiss was originally due on February 27, 2025, and the Court ultimately granted
16 Plaintiff until July 9, 2025 to file her opposition. 6/25/2025 Order. Plaintiff had over four
17 months to file her opposition and failed to do so. See Docket. Because the Court did not
18 authorize Plaintiff to file an untimely opposition, the Court grants Defendant's motion to
19 strike Plaintiff's untimely opposition.

20 Turning next to whether dismissal is warranted here, the Court applies the factors
21 for involuntary dismissal and finds this action should be dismissed. *See Applied*
22 *Underwriters*, 913 F.3d at 890.

23 1. Public's Interest in Expeditious Resolution of Litigation and Court's
24 Need to Manage its Docket

25 Defendant argues that the public's interest in expeditious resolution of litigation
26 always favors dismissal. Def. MTD at 15-16 (citing *Yourish v. California Amplifier*, 191
27 F.3d 983, 990 (9th Cir. 1999)). Defendant argues Plaintiff's failure to serve her initial
28 disclosures in compliance with the Court's order, failure to respond to discovery

1 requests, failure to meet and confer on numerous occasions, and failure to respond to
2 Defendant's attempts to schedule Plaintiff's deposition and site inspection favors
3 dismissal because Plaintiff has not conducted discovery in two years and has ceased
4 communications with Defendant's counsel. Def. MTD at 16. Defendant also argues
5 Plaintiff has repeatedly sought continuances of this case and has failed to move the
6 case forward. *Id.*

7 Here, the first two factors weigh in favor of dismissal because the public has a
8 strong interest in expeditious resolution of litigation, and for years, Plaintiff has failed to
9 take the steps necessary to move this case forward. This action has been pending since
10 2023. See Docket. Since the inception of this action, Plaintiff has been warned on
11 multiple occasions by this Court of her obligation to participate in moving her case
12 forward, confer in good faith with Defendant, and that Plaintiff's future failure to confer
13 may result in sanctions, including dismissal of her action. See 3/28/2023 Order;
14 5/11/2023 Order; 7/18/2023 Order. Plaintiff has also requested eight (8) extensions
15 since this action was removed from state court to either allow Plaintiff time to obtain legal
16 counsel or because of medical issues. See ECF Nos. 7 (requesting a stay of the action
17 without a determinate date while Plaintiff "secure[d] legal counsel"), 10 (requesting a stay
18 of this action without a determinate date "until legal counsel is secured"), 12 (requesting
19 "medical continuance" without a determinate date and indicating Plaintiff has been
20 "unable to proceed with the case due to [] medical crisis"), 14 (requesting a 60-day
21 extension of time as she is in the process of obtaining legal counsel), 36 (requesting 60-
22 day extension of time to obtain legal counsel), 38 (requesting a 6 month extension of
23 time because Plaintiff was "unable to proceed with the case due to medical crisis"), 61
24 (requesting 45-60 day extension of time to file her opposition), 72 (requesting a 30-day
25 "medical continuance"). Here, not only has Defendant made numerous attempts to gain
26 Plaintiff's cooperation in moving this action forward, the Court has also provided Plaintiff
27 multiple extensions in light of her unexplained medical condition and effort to retain legal
28 counsel. However, Plaintiff has demonstrated that her repeated failure to participate in

1 this litigation and comply with the Court's orders, thereby hindering the Court's ability to
2 move this action towards disposition. In addition, this district court in particular has a
3 strong need and interest in managing its docket given the extremely high caseload in the
4 Eastern District of California. The Court has expended scarce judicial resources
5 attempting to gain Plaintiff's participation and cooperation in this action. Plaintiff's failure
6 to comply with her discovery obligations, comply with the Court's orders, and oppose the
7 motions filed, establishes Plaintiff's failure to diligently litigate this action. Accordingly,
8 these two factors weigh in favor of dismissal.

9 2. Risk of Prejudice to the Defendant

10 Defendant argues Plaintiff's failure to conduct discovery for the past two years,
11 including failing to serve initial disclosures, failing to respond to discovery requests, and
12 failing to confer, has prejudiced Defendant's ability to proceed with this action
13 expeditiously. Def. MTD at 17. Defendant argues the allegations in this action involve
14 incidents that took place over four years ago in January 2021. Defendant argues it has
15 been prejudiced by its inability to inspect the subject property to determine its condition
16 for the past two years and that Plaintiff's failure to uphold her discovery obligations and
17 failure to communicate with Defendant has further prejudiced Defendant's ability to
18 obtain any discovery, exacerbated the likelihood of memory loss by witnesses because
19 the alleged incidents took place in 2021, and is resulting in an increase in the claimed
20 damages and the deterioration of evidence. *Id.* Defendant further argues Defendant's
21 attempts to meet and confer with Plaintiff and obtain discovery responses from Plaintiff
22 has unnecessarily increased litigation costs. *Id.* at 17-18.

23 Pursuant to the Court's October 3, 2024 Pretrial Scheduling Order, initial
24 disclosures were ordered to be exchanged by November 8, 2024. 10/3/2024 Pretrial
25 Sch. Order at 3, 7. Based on the record, Defendant served Plaintiff with its initial
26 disclosures on November 8, 2024. See Decl. Shadie Maghareh, Exh. 1 (ECF No. 51-1).
27 On December 17, 2024, Defendant also served Plaintiff with discovery requests,
28 including requests for admissions and requests for production of documents. *Id.*, Exh. 3.

1 To date, Plaintiff has not filed responses to Defendant's discovery requests or fulfilled
2 her discovery obligations, including to comply with the Court's October 3, 2024 Pretrial
3 Scheduling Order. See *also* Fed. R. Civ. P. 26(a), 34(a), 36(a). To require Defendant to
4 continue to defend this action and incur litigation costs is prejudicial to Defendant,
5 especially given the impact on resources of stale litigation. It is clear that Plaintiff is not
6 diligently prosecuting this action. Although the Court is sympathetic to Plaintiff's alleged
7 health issues, many extensions have already been granted and despite repeated
8 extensions, Plaintiff continues to fail to uphold her obligations and to meaningfully
9 participate in a lawsuit that she brought. Therefore, the risk of prejudice to the Defendant
10 also weighs in favor of dismissal.

11 3. Availability of Less Drastic Alternatives

12 Defendant argues dismissal is appropriate because despite receiving multiple
13 extensions in this action, and explicit warnings from the Court regarding dismissal as a
14 potential sanction, Plaintiff continues to not actively participate in this action. Def. MTD at
15 18-20. Defendant further argues the Court's warnings have also not affected Plaintiff's
16 conduct. *Id* at 20. The Court agrees. The Court has already tried less drastic alternatives
17 multiple times. The Court has provided Plaintiff multiple opportunities to obtain legal
18 counsel, has extended multiple deadlines in light of Plaintiff's medical condition and
19 effort to obtain legal counsel, has repeatedly warned Plaintiff of her obligation to confer
20 with Defendant, has continued court hearings, and has provided Plaintiff additional
21 opportunities to timely oppose the pending motion to dismiss. Therefore, the Court finds
22 that the imposition of alternative sanctions would be futile to gain Plaintiff's compliance to
23 move this action forward as its many prior attempts have failed. Moreover, Plaintiff has
24 been advised on multiple occasions that failure to comply with the Court's orders may
25 result in the imposition of sanctions, including dismissal. See 3/28/2023 Order;
26 5/11/2023 Order; 6/21/2023 Order; *see also Malone v. U.S. Postal Serv.*, 833 F.2d 128,
27 132 (9th Cir. 1987) ("warning a plaintiff that failure to obey a court order will result in
28 dismissal can suffice to meet the 'consideration of alternatives' requirement") (citation

omitted). Accordingly, this factor weighs in favor of dismissal.

4. Public Policy Favoring Disposition on the Merits

As to the last factor, Defendant argues Plaintiff's failure to participate in discovery, failure to confer, and failure to comply with the Court's orders has prevented Defendant from being able to adequately defend against Plaintiff's allegations. Def. MTD at 21. Defendant argues as a result, Plaintiff has failed to move the case forward. *Id.* The Court finds the factor as to the public policy favoring disposition of cases on their merits is outweighed here. Plaintiff's own failure to prosecute the case and comply with the rules preclude a resolution on the merits. This action cannot proceed without Plaintiff's participation, compliance with the Federal Rules of Civil Procedure, and compliance with the Court's orders.

Therefore, after careful consideration, the Court concludes dismissal for failure to prosecute is appropriate. The Court therefore recommends granting Defendant's motion to dismiss. The Court denies as moot Defendant's alternative motion to compel in light of the Court's recommendation to dismiss this action.

B. Defendant's Motion for Monetary Sanctions

Because the Court recommends dismissal of this action, the Court denies without prejudice Defendant's motion for monetary sanctions (ECF No. 66). If this action is not dismissed, Defendant may renew its motion for monetary sanctions.

IV. CONCLUSION

Based on the above, IT IS HEREBY ORDERED that:

1. Defendant's motion to strike (ECF No. 76) is GRANTED;
2. Plaintiff's opposition to Defendant's motion to dismiss (ECF No. 75) is STRICKEN from the Docket; and
3. Defendant's alternative motion to compel (ECF No. 51) is DENIED as MOOT; and
4. Defendant's motion for monetary sanctions (ECF No. 66) is DENIED without prejudice.

Further, based upon the findings above, IT IS HEREBY RECOMMENDED that:

1. Defendant's motion to dismiss (ECF No. 51) is GRANTED; and
2. The Clerk of the Court be directed to CLOSE this case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the Court and serve a copy on all parties. This document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served on all parties and filed with the Court within 14 days after service of the objections. Failure to file objections within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

Dated: July 29, 2025



CHI SOO KIM
UNITED STATES MAGISTRATE JUDGE

4, beas0326.23